

Modification of Judicial Advisement Requirements during Plea Hearings

Green v. State, No. S23A0840, 2024 Ga. LEXIS 49 (Feb. 20, 2024).¹

Decided by the Supreme Court of Georgia on February 20, 2024.²

Counsel for Green, Appellant: Lauren Beth Shubow, Steven Eric Phillips, Office of the Public Defender.³

Counsel for State of Georgia, Appellee: Patricia B. Attaway Burton, Deputy Attorney General, Paula Khristian Smith, Senior Assistant Attorney General, Christopher M. Carr, Attorney General, Meghan Hobbs Hill, Assistant Attorney General, Department of Law, Fani T. Willis, District Attorney, Kevin Christopher Armstrong, Senior A.D.A., Aslean Zachary Eaglin, A.D.A., Fulton County District Attorney's Office.⁴

Before Chief Justice Michael P. Boggs, **Presiding Justice** Nels S.D. Peterson, and **Justices** Sarah Hawkins Warren, Charles J. Bethel, John J. Ellington, Carla Wong McMillian, Shawn Ellen LaGrua, Verda M. Colvin, and Andrew A. Pinson.⁵ Opinion authored by Justice Pinson.⁶

KEY ISSUES PRESENTED

In its decision in *Green v. State*, the Georgia Supreme Court did not acknowledge a critical oversight that pervades America's legal system: the assumption that courtrooms inherently foster comprehension.⁷ This assumption dangerously ignores the reality that mere physical presence in a courtroom does not guarantee a defendant's understanding of the legal proceedings or the implications of their decisions. It is essential to affirm that true comprehension requires explicit clarification from the court to ensure that a defendant fully grasps the consequences of their plea. This duty extends

¹ *Green v. State*, No. S23A0840, 2024 Ga. LEXIS 49 (Feb. 20, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *See Green*, 2024 Ga. LEXIS 49.

beyond mere procedural formality to a fundamental right that safeguards the integrity of the judicial process.⁸

The assumption held by courts that defendants inherently grasp the gravity of their legal decisions during plea hearings challenges the reality that many defendants, unversed in legal intricacies, may not truly comprehend the full scope of their rights or the permanent consequences of their waivers.⁹ The case examines whether the standard legal advisements provided during plea agreements sufficiently inform defendants to meet the constitutional standards of a knowing and voluntary waiver. *Green* is not just about one man's plea but about the broader implications for justice and fairness in the legal process where the ideals of voluntariness and informed consent are put to the test.

Several concerns arise from the *Green* decision that resonate through Georgia's legal landscape. First, there is the issue of the voluntary nature of plea bargains—whether defendants are genuinely making informed decisions or are merely navigating through the plea process unable to comprehend its consequences.¹⁰ Another concern involves the comprehensiveness of legal advisements: Does the current standard of advising in courtrooms adequately ensure that defendants are fully aware of what they are relinquishing? Is there such an understanding, among all defendants, regardless of their educational background or familiarity with legal jargon, that they are to make such life-altering decisions, or does the departure from standards of formalistic reading not capture all defendants well enough? These issues highlight a fundamental

⁸ See e.g., *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 1171 (1969) ("A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege.' Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void. Moreover, because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.") (internal citations omitted)(superseded by statute). In response to *McCarthy*, Rule 11 was itself amended in 1983 to add Rule 11(h), which is entitled "Harmless Error" and provides: "Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded."

⁹ See *infra*, notes 70-75 and accompanying text.

¹⁰ See *infra*, notes 96-99 and accompanying text.

concern over the balance between judicial efficiency and the protection of individual rights within the criminal justice system.¹¹

Donald Berry Green entered a guilty plea for felony murder and aggravated assault related to the shooting death of Andre Winter.¹² His plea was entered in a court session where the judge explained some of the rights *Green* was forfeiting by pleading guilty, including the right to a jury trial and the right to confront witnesses.¹³ Absent from the judge's explanation was a specific recitation to the defendant of the waiver of his Fifth Amendment right against self-incrimination.¹⁴ At the plea hearing, *Green* acknowledged his understanding of the rights recited and the consequences of his plea, which the trial court held was adequate affirmation that the plea was entered into voluntarily and knowingly.¹⁵ He was subsequently sentenced to life imprisonment.¹⁶

Several years after his sentencing, Green initiated legal actions to file for an out-of-time appeal, arguing issues related to his original plea.¹⁷ Green argued that his guilty plea was invalid because he was not explicitly advised of his right against compelled self-incrimination as required by *Boykin v. Alabama*.¹⁸ The State contended that an explicit advisement of all Boykin rights is not necessary if the overall record indicates that the plea was voluntary and intelligent, urging the court to overrule its prior requirement for such specific advisement in alignment with a broader interpretation of federal law.¹⁹

The Georgia Supreme Court rejected Green's arguments and held that his guilty plea was valid as it was entered voluntarily and with a full

¹¹ See *infra*, notes 116-121 and accompanying text.

¹² *Green*, 2024 Ga. LEXIS 49, at *3-*5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Green*, 2024 Ga. LEXIS 49, at *5; see also *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709 (1969).

¹⁹ *Green*, 2024 Ga. LEXIS 49, at *5.

understanding of the consequences.²⁰ The Court reasoned that the record showed that, in the totality of the circumstances, Green was aware of the rights he was waived and that the plea procedures met federal constitutional requirements.²¹ The Court ultimately denied Green's motion for an out-of-time appeal and upheld his conviction and life sentence.²²

Green underscores the importance of ensuring that defendants fully understand the rights they are waiving when entering a guilty plea, since constitutional standards demand such pleas be voluntary and informed.²³ This is important to uphold the integrity of the judicial process and protect individual rights. However, the Court appears to trade these interests in favor of judicial efficiency.²⁴ By not requiring affirmative disclosure of the right against self-incrimination during guilty pleas, the Court overlooks the practical realities faced by defendants in the courtroom.²⁵ Courtrooms can present an intimidating and coercive environment to those unversed in the law.²⁶ Requiring the right to self-incrimination be explicitly stated is rooted in the principle that a knowing waiver must truly be "knowing" – a fully informed decision made without any ambiguity about what rights are surrendered and what rights are not.²⁷ This stance challenges the assumption that the general presence of legal formalities and professionals ensures defendant understanding comparable to the judges and attorneys in the courtroom.²⁸ The Court joins a trend of ignoring the disconnect more akin to speaking a foreign language to the uninitiated.²⁹ Ensuring that defendants explicitly acknowledge their waiver of the right against self-incrimination

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *See Green*, 2024 Ga. LEXIS 49.

²⁵ *See e.g.*, Allison Orr Larsen, *Bargaining Inside the Black Box*, 99 GEO. L. J. 1567 (August 2011).

²⁶ *Id.*

²⁷ *See McCarthy*, 394 U.S. at 466 (a waiver of rights "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts").

²⁸ *See Anne Bowen Poulin, Strengthening the Criminal Defendant's Right to Counsel*, 28 CARDOZO L. REV. 1213 (December 2006).

²⁹ *See id.*

directly supports the foundational legal principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done.³⁰

Courtrooms can exert a significant coercive influence on defendants that is often overlooked.³¹ This influence undermines the assumption that defendants understand the legal implications of their actions merely by being present.³² A truly knowing waiver of the right against self-incrimination, as required for a voluntary and intelligent plea, necessitates explicit and clear advisement of the existence of this right.³³ Protective measures should extend in plea procedures where significant rights are waived, ensuring that all defendants, regardless of their lack of legal knowledge, receive clear guidance on the consequences of their pleas, including the right against self-incrimination.³⁴

This Case Note evaluates how the decision in *Green* continues a trend of scaling back defendant's rights concerning the advisement of rights.³⁵ The focus is on how *Green* impacts the clarity and application of the law regarding voluntary and knowing waivers and argues for a return to the adoption of explicit advisement of rights in courtrooms as a necessary approach to addressing an old problem – ensuring that all defendants can make truly informed decisions about their legal rights. This Case Note analyzes the broader implications of the *Green v. State* decision on the advisement of

³⁰ *Ex parte McCarthy*, [1924] 1 K.B. 256, 259 (1923); see also *Offutt v. United States*, 348 U.S. 11, 14, 99 L. Ed. 11, 75 S. Ct. 11 (1954) (“Justice must satisfy the appearance of justice.”).

³¹ See Richard Klein, *Due Process Denied: Judicial Coercion in the Plea Bargaining Process*, 32 HOFSTRA L. REV. 1349 (2004).

³² See *id.* See also M. Eve Hanan, *Talking Back in Court*, 96 WASH. L. REV. 493 (June 2021).

³³ *McCarthy*, 394 U.S. at 466; see also *United States v. Broce*, 488 U.S. 563, 570, 109 S. Ct. 757, 672-763 (1989).

³⁴ See Alexandra W. Reimelt, *An Unjust Bargain: Plea Bargains and Waiver of the Right to Appeal*, 51 B.C. L. REV. 871 (May 2010).

³⁵ See *Maryland v. Shatzer*, 559 U.S. 98, 103, 130 S. Ct. 1213, 1219 (2010) (noting that a judicially crafted rule is only justified by its “prophylactic purpose” and applies only where its benefits outweighs its costs); Shima Baradaran, *Restoring the Presumption of Innocence*, 72 OHIO ST. L. J. 723 (January 1, 2011) (noting a shift in the meaning of due process and the presumption of innocence pretrial). *But see* Shih-Chun Steven Chien, *Miranda in Taiwan: Why it Failed and Why We Should Care*, 17 U. PA. ASIAN L. REV. 1 (2022) (noting that *Miranda* weakened safeguards by shifting the courts’ focus from whether the interrogation process was coercive to whether the police followed *Miranda* protocol).

rights during plea hearings and ultimately aims to demonstrate the critical need for explicit advisement of rights to ensure truly informed and voluntary guilty pleas.

PROCEDURAL HISTORY & POSTURE

Green v. State originated in the Fulton County Superior Court, where Donald Green was charged with felony murder and aggravated assault, to which he pled guilty.³⁶ Green later filed motions seeking an out-of-time appeal and other relief.³⁷ The trial court entered a final disposition affirming the sentence for the two counts to which Green initially pled guilty.³⁸ Green did not move to withdraw his guilty plea, but filed an appeal from the trial court's final judgment.³⁹

SUBSTANTIVE FACTS

Green's guilty plea was entered to charges of felony murder and aggravated assault related to the shooting death of Andre Winter.⁴⁰ During the plea colloquy, the court outlined some of the rights that Green would be waiving by entering a guilty plea, such as the right to a jury trial and the right to confront witnesses. Absent from the judge's explanation was a specific recitation to the defendant of the waiver of his Fifth Amendment right against self-incrimination.⁴¹ At the plea hearing, Green acknowledged his understanding of the rights recited and the consequences of his plea, which the trial court held was adequate affirmation that the plea was entered into voluntarily and knowingly.⁴² He was subsequently sentenced to life imprisonment.⁴³

³⁶ *Green*, 2024 Ga. LEXIS 49 at *4-5.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Green*, 2024 Ga. LEXIS 49, at *2.

⁴³ *Id.*, n. 1.

Years later, Green pursued post-conviction relief in an out-of-time appeal.⁴⁴ During these proceedings, his plea counsel testified about her general practices in handling plea agreements.⁴⁵ She explained that she typically informed clients about the rights they would waive by pleading guilty, including the right to a trial and the right to confront witnesses.⁴⁶ However, when she began to detail these practices, the prosecution objected, arguing that her testimony was beyond the scope of the hearing, which was supposed to focus solely on whether Green had been informed about his rights to appeal.⁴⁷ The court sustained the objection and limited the scope of her testimony.⁴⁸

The testimony appeared likely to elicit information on whether Green had been explicitly informed of his right against compelled self-incrimination, of the *Boykin* rights.⁴⁹ Without the testimony and without the trial court's own recitation of Green's right of self-incrimination being waived, the record lacked any affirmative evidence that Green knew he was waiving his right against self-incrimination.⁵⁰

LEGAL ANALYSIS LEADING TO THE COURT'S DISPOSITION

Prior to the decision in *Green*, the jurisprudence governing guilty pleas was principally shaped by a sequence of U.S. Supreme Court decisions, starting with *Boykin v. Alabama*.⁵¹ In *Boykin*, the Court established a critical precedent, mandating that defendants must be fully informed of the rights they waive by entering a guilty plea.⁵² These rights specifically include 1) the right to a jury trial, 2) the right to confront adverse witnesses, and 3) the right

⁴⁴ *Id.* at *4.

⁴⁵ *Id.* at *5.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Green*, 2024 Ga. LEXIS 49, at *5-6.

⁴⁹ *See id.* (in response to the question, "What would you advise [clients regarding a plea]?" the plea counsel responded "That they give up their rights to trial. They give up their rights to confrontation. They give up --" before being cut off by the objection).

⁵⁰ *Id.*

⁵¹ 395 U.S. 238, 89 S. Ct. 1709 (1969).

⁵² *Id.* at 242-43.

against compelled self-incrimination.⁵³ This case set the stage for subsequent rulings that further defined the requirements for a constitutionally valid guilty plea.⁵⁴

Green contended that his guilty plea was invalid because the record did not expressly show that he was specifically advised that he was waiving his right against compelled self-incrimination.⁵⁵ He argued that this omission violated the standard set by the U.S. Supreme Court in *Boykin v. Alabama*, which requires that a defendant's waiver of rights when entering a guilty plea be made voluntarily and intelligently, with an explicit record of the waiver of specific rights.⁵⁶

The State argued that federal due process does not necessitate an on-the-record recitation of all three *Boykin* if the overall record shows that the plea was voluntary and intelligent under the totality of the circumstances.⁵⁷ The State requested the court to reconsider and overrule its precedent that required the explicit advisement of these rights, arguing that this was not aligned with the broader interpretation of federal law.⁵⁸

The Georgia Supreme Court agreed with the State's position and concluded that the previous strict requirement for an explicit record of each waived right was not mandated by federal constitutional standards.⁵⁹ The court reasoned that the totality of circumstances showed that Green's plea was voluntary and intelligent, holding that his guilty plea was valid despite the absence in the record of any evidence of affirmative disclosure that the defendant was waiving his right against self-incrimination.⁶⁰

The court asserted that its previous decisions had misapplied the standards set forth in *Boykin* and subsequent interpretations by the U.S. Supreme Court.⁶¹ The Court went on to discuss how these decisions

⁵³ *Id.*

⁵⁴ *Green*, 2024 Ga. LEXIS 49, at *15-16.

⁵⁵ *Id.* at *9.

⁵⁶ *Id.*; see also *Boykin*, 395 U.S. at 242-43.

⁵⁷ *Green*, 2024 Ga. LEXIS 49, at *9.

⁵⁸ *Id.*

⁵⁹ *Id.* at *1.

⁶⁰ *Id.*

⁶¹ *Id.*

inadvertently created a standard that was not required by federal law and which diverged significantly from the broader legal consensus.⁶² The Georgia Supreme Court sought to “correct course” in a move that addressed inconsistency in application of the requirements under *Boykin* for accepting a valid guilty plea.⁶³

The opinion critically addressed the interpretation and application of the *Boykin* precedent within Georgia’s legal framework and concluded that the strict interpretation requiring explicit documentation of the waiver of all three *Boykin* rights was overly rigid and not supported by the U.S. Supreme Court jurisprudence.⁶⁴ The Court asserted that neither *Boykin*, nor subsequent Supreme Court decisions, mandated the formalistic application and pointed out that almost every jurisdiction in the United States had rejected such a “rigid” interpretation.⁶⁵ The Georgia Supreme Court’s decision in this case relied on a mixture of statutory interpretations, uniform rules, and a series of previous cases—both from the U.S. Supreme Court and Georgia’s own jurisprudence—to guide its reasoning and conclusions.⁶⁶

In *Boykin v. Alabama*, the U.S. Supreme Court addressed the requirements for accepting a guilty plea in a criminal case.⁶⁷ James *Boykin* pleaded guilty to five counts of robbery and received a death sentence.⁶⁸ The Supreme Court reversed his conviction, emphasizing that a guilty plea involves the waiver of several constitutional rights, including the right to a jury trial, the right to confront one's accusers, and the right against self-incrimination.⁶⁹ The Court ruled that the record must affirmatively demonstrate that a defendant entered a guilty plea voluntarily and with a clear understanding of the rights being waived, stating that courts cannot presume a waiver from a "silent record."⁷⁰ *Boykin* established the requirement that a guilty plea must be voluntarily and knowingly made, with an understanding

⁶² *Id.*

⁶³ *Green*, 2024 Ga. LEXIS 49, at *2.

⁶⁴ *Id.*

⁶⁵ *Id.* at *8.

⁶⁶ *Id.*

⁶⁷ 395 U.S. 238.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 242-43.

of the rights being waived.⁷¹ The Georgia Supreme Court referenced *Boykin* extensively, noting its historical misinterpretation in Georgia courts regarding the necessity to explicitly record each right waived.

Following *Boykin*, the U.S. Supreme Court in *Brady v. United States* clarified that a guilty plea must be both voluntary and made with a comprehensive understanding of the nature of the charge and the consequences of the plea.⁷² Robert Brady had pleaded guilty to a federal kidnapping charge after being threatened with the possibility of facing the death penalty if he did not plead guilty.⁷³ The U.S. Supreme Court held that a plea of guilty must be both voluntary and made with an awareness of the relevant circumstances and likely consequences.⁷⁴ *Brady* highlighted that a defendant's guilty plea must be informed and not coerced, broadening the interpretation of what constitutes a voluntary plea.⁷⁵ *Brady* further clarified the voluntary and knowledgeable requirements of guilty pleas and was used by the Georgia Supreme Court to emphasize the totality of the circumstances test rather than a formalistic recitation of waived rights.⁷⁶ The decision in *Brady* emphasized that a plea must be an informed decision, not just a formalistic waiver of rights.⁷⁷

Not long after *Brady*, the U.S. Supreme Court recognized in *North Carolina v. Alford* that a defendant could plead guilty even while maintaining innocence, provided the plea is entered knowingly and voluntarily, highlighting the practical considerations and strategic decisions involved in plea bargaining.⁷⁸ Henry Alford had entered a guilty plea to a charge of second-degree murder while maintaining his innocence, to avoid the death penalty for first-degree murder.⁷⁹ The Supreme Court held that a defendant could plead guilty for tactical reasons while still claiming innocence, provided the plea is voluntary and the defendant fully understands the

⁷¹ *Id.*

⁷² 397 U.S. 742 n.4, 90 S. Ct. 1463 (1970).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *North Carolina v. Alford*, 400 U.S. 25, 31, 91 S. Ct. 160 (1970).

⁷⁹ *Id.*

consequences.⁸⁰ This decision established what is known as an “*Alford* plea,” where a defendant does not admit guilt but acknowledges that the prosecution's evidence would likely lead to a conviction.⁸¹ Referred to in the context of understanding the voluntary nature of guilty pleas, *Alford* was cited to support the notion that the substantive voluntary and intelligent plea requirements were not altered by *Boykin*.⁸²

Federal appellate courts, including the 5th and 11th Circuits, have also influenced the landscape of guilty pleas.⁸³ In *United States v. Frontero*, the court noted that due process does not necessitate that a defendant be informed of each right waived by a guilty plea, as long as the record reflects that the plea was voluntary and the defendant understood the consequences.⁸⁴ Similarly, the 11th Circuit in *United States v. Simmons* emphasized that a record must demonstrate that the plea was entered voluntarily and with affirmative awareness of its consequences, under the totality of the circumstances without the need for strict procedural formality.⁸⁵

Within Georgia, the case law has evolved to reflect these principles while adapting to specific state judicial interpretations.⁸⁶ In *Goodman v. State*, the Georgia Supreme Court upheld a guilty plea despite the defendant not being explicitly advised of his right against self-incrimination during the plea proceedings.⁸⁷ The court held that the plea was still valid as it was entered voluntarily and with an understanding of its consequences, emphasizing that a specific advisement of rights was not necessary as long as the plea was informed.⁸⁸ In *Green*, the Georgia Supreme Court revisited its *Goodman* decision to show earlier rejection of the rigid formalistic rule that

⁸⁰ *Id.*

⁸¹ *Green*, 2024 Ga. LEXIS 49, at *15.

⁸² *Id.*

⁸³ See *Bonner v. Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (explaining that the U.S. Court of Appeals for the Eleventh Circuit was established on October 1, 1981 pursuant to the Fifth Circuit Court of Appeals Reorganization Act, and adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to that date).

⁸⁴ 452 F.2d 406, 415 (5th Cir. 1971).

⁸⁵ 961 F.2d 183, 187 (11th Cir. 1992).

⁸⁶ *Green*, 2024 Ga. LEXIS 49, at *35.

⁸⁷ 249 Ga. 11, 13-15, 287 S.E.2d 26, 28-30 (1982).

⁸⁸ *Id.*

developed post-*Boykin*.⁸⁹ *Goodman* represented an earlier decision that a guilty plea is valid if the overall record shows that it was entered voluntarily and with an understanding of the plea's nature and consequences, even if not all rights are specifically mentioned.⁹⁰

The Georgia Supreme Court also made reference to Uniform Superior Court Rule 33.8 as a guide to Georgia trial courts on the necessary procedures for accepting guilty pleas, emphasizing the process should ensure a defendant's understanding and voluntary agreement to the plea terms, but that it only requires the record as a whole show the plea was voluntary and intelligent.⁹¹

The legal framework prior to *Green* comprised a blend of courts requiring formalistic recitation of the three *Boykin* rights, while other decisions considered it unnecessary for the recitation under the totality of the circumstances surrounding a guilty plea.⁹² The Georgia Supreme Court decided it was necessary to correct this misinterpretation and realign Georgia's legal framework with the broader and more flexible federal interpretation, which assesses the voluntariness and intelligence of a guilty plea based on the overall context and not merely on the explicit mention of certain rights.⁹³

By overruling previous decisions, the Court is effectively not requiring a totality of the circumstances analysis to include an affirmative disclosure of each *Boykin* right being waived by pleading guilty.⁹⁴ However, the Court could have maintained the totality of the circumstances test, while also holding that under the totality of the circumstances, a defendant cannot possibly waive a *Boykin* right that is not affirmatively disclosed in the plea

⁸⁹ *Green*, 2024 Ga. LEXIS 49, AT *36-37.

⁹⁰ 249 Ga. at 13-15.

⁹¹ *Green*, 2024 Ga. LEXIS 49, at *49.

⁹² *Sutton v. Sanders*, 283 Ga. 28, 656 S.E.2d 796 (2008); *Arnold v. Howerton*, 282 Ga. 66, S.E.2d 75 (2007); *Hawes v. State*, 281 Ga. 822 (2007); see also *Thomason v. Caldwell*, 229 Ga. 637, 642-43, 194 S.E.2d 112 (1972) (holding a plea to be voluntary and understanding despite failure to mention two of the *Boykin* rights); *McCrary v. Ricketts*, 232 Ga. 890, 891, 209 S.E.2d 148 (1974); *Mason v. Balcom*, 230 Ga. 838, 199 S.E.2d 313 (1973); *Wyatt v. Caldwell*, 229 Ga. 597, 193 S.E.2d 607 (1972).

⁹³ *Green*, 2024 Ga. LEXIS 49, at *43-44.

⁹⁴ See *id.*

procedures.⁹⁵ Despite emphasizing that a plea may be made voluntarily and with a comprehensive understanding of its consequences, it may now be so in situations where there is no evidence that a defendant was ever informed of his right against self-incrimination.⁹⁶ It does seem that the Court sought to prevent automatic reversals of guilty pleas that were substantively fair and informed, despite procedural lapses in documentation; however, it seems to represent a broader approach to scale back individual rights.⁹⁷

The opinion noted that the overwhelming majority of jurisdictions, including both federal and state courts, do not require that each of the *Boykin* rights be explicitly recited and documented on the record for a guilty plea to be considered valid.⁹⁸ Instead, these courts apply a totality of the circumstances test to determine whether a plea was made voluntarily and with an understanding of its consequences.⁹⁹

Ultimately, the Georgia Supreme Court overturned any previous decisions holding that recitation of the *Boykin* rights were required to obtain a knowing waiver of the defendant's rights and made the totality of the circumstances test more flexible when assessing the validity of guilty pleas.¹⁰⁰

IMPACT UPON GEORGIA LAW PRACTICE

Prior to *Green*, the legal standard in Georgia for determining the validity of a guilty plea appeared to require some evidence of the affirmative disclosure of the *Boykin* rights to prove a defendant's awareness of his right to self-incrimination and the consequences of its waiver.¹⁰¹ Since a court record no longer must explicitly show that the defendant was informed of and waived these three specific rights, a guilty plea can be valid despite no disclosure to the defendant that his right of self-incrimination will be waived

⁹⁵ *See id.*

⁹⁶ *See id.*

⁹⁷ *Id.* at *45-46.

⁹⁸ *Id.* at *8.

⁹⁹ *Green*, 2024 Ga. LEXIS 49, at *8.

¹⁰⁰ *See id.* at *41.

¹⁰¹ *See supra* notes 54-59 and accompanying text.

as a result.¹⁰² It is further unclear whether the defendant must be informed of the other two *Boykin* rights – the right to a jury trial and the right to confront his accusers – but it appears that a court may still find defendant to have voluntarily and knowingly entered a valid guilty plea under the totality of the circumstances without disclosure of any of the three *Boykin* rights.¹⁰³

The Court's analysis presumes that the presence of counsel and the procedural nature of courtroom settings inherently ensure a defendant understands their rights outside of the plea procedures.¹⁰⁴ Otherwise, how may a defendant know what he is waiving and the consequences if he is not told within the plea procedures? Combined with the uneven bargaining power a defendant experiences with the prosecution, along with high rates of plea bargaining, the scales must be balanced by an affirmative disclosure to the defendant of the exact rights he is waiving and the consequences of that waiver.¹⁰⁵

The Georgia Supreme Court minimized the importance of direct advisement and overlooked the fact that many defendants simply do not know each and every right they are giving up by pleading guilty.¹⁰⁶ The court's

¹⁰² *Green*, 2024 Ga. LEXIS 49, at *7-9.

¹⁰³ *Id.*

¹⁰⁴ *See id.*; *see also* Kelsey S. Henderson et al., *Judicial Involvement in Plea-Bargaining*, 28 PSYCH. PUB. POL. & L. 356 (October 7, 2021).

¹⁰⁵ *See* Fed. R. Crim. P. 11(c). Under Rule 11, the court must personally address the defendant prior to accepting a guilty plea, ensuring that the defendant comprehensively understands various aspects such as the nature of the charge, the corresponding penalties, the right to legal counsel, and the rights to a jury trial and to confront and cross-examine witnesses. Additionally, Rule 11 mandates the court to verify the voluntary nature of the plea. However, Rule 11 does not obligate the court to inquire into the status of discovery or the defendant's factual comprehension of the prosecution's case. Primarily, Rule 11(c) aims to embody the constitutional prerequisites for a valid guilty plea, as established by the Supreme Court in *Boykin*. *But see Green*, 2024 Ga. LEXIS 49, at *28 (“If *Boykin* required automatic reversal of a guilty plea as a matter of federal constitutional law any time the defendant is not advised on the record that he is waiving one of the three “*Boykin* rights,” Rule 11 would have to require reversal as well. Yet Rule 11—a rule that is put in place and amended only after review by the United States Supreme Court and Congress, among others—excuses the failure to recite one of the “*Boykin* rights” if it is harmless error. That approach to the “*Boykin* rights” gives us another sign that *Boykin* did not carve out the three rights it listed for special constitutional treatment.”).

¹⁰⁶ *See* John G. Douglass, *Fatal Attraction? The Uneasy Courtship of Brady and Plea Bargaining*, 50 EMORY L. J. 437 (2001) (“*Brady* may offer the least to those who need it the

holding that a defendant may understand the consequences of a guilty plea under the totality of the circumstances where the defendant is not directly advised of his *Boykin* rights dilutes the protective intent of the right against self-incrimination.¹⁰⁷

The impact on Georgia courts may not be immediately apparent since the decision aligns with the reluctance of courts to allow an automatic reversal of a guilty plea.¹⁰⁸ The decision may tighten the reins on successful appeals and conviction relief efforts that hinge on procedural oversights such as a failure to explicitly advise on certain rights.¹⁰⁹ Defendants will be required to put on more substantial evidence that the plea lacked a voluntary and knowing waiver, which has the potential to reduce overturned convictions.¹¹⁰

From a public policy perspective, ensuring guilty pleas are entered knowingly and voluntarily helps prevent wrongful convictions and future legal challenges, which can be costly and damaging both to individuals and to the system as a whole.¹¹¹ A sound public policy determination should aim to minimize these outcomes by providing clear, comprehensive advisements during plea proceedings.¹¹²

most: those relatively uninformed defendants who enter quick pleas in response to 'sweetheart' bargains.”).

¹⁰⁷ See Robert S. Gerstein, *The Demise of Boyd: Self-Incrimination and Private Papers in the Burger Court*, 27 UCLA L. REV. 343 (1979) (noting that the plea bargaining process often leaves the defendant confused and at a loss to know how to assess his own guilt).

¹⁰⁸ See *Green*, 2024 Ga. LEXIS 49 (noting that many Georgia courts have refused to grant automatic reversal under the harmless error rule); See also Lindsey Webb, *The Immortal Accusation*, 90 WASH. L. REV. 1853 (December 1, 2015) (noting that the criminal justice system has a larger allegiance to preserving findings of guilt).

¹⁰⁹ See Daniel P. Blank, *Plea Bargain Waivers Reconsidered: A Legal Pragmatist's Guide to Loss, Abandonment and Alienation*, 68 FORDHAM L. REV. 2011 (May, 2000) (“In light of this uncertainty, criminal waivers such as those included in plea agreements have multiplied without limit.”).

¹¹⁰ See *Green*, 2024 Ga. LEXIS 49, at *13-14 (holding that a plea may still be reversed if, under the totality of the circumstances, the defendant did not have understanding of the consequences of entering the guilty plea).

¹¹¹ Samuel R. Wiseman, *Waiving Innocence*, 96 MINN. L. REV. 952 (February 1, 2012).

¹¹² See Jacqueline L. Schreurs, *For the Sake of Public Policy: Plea Bargaining Demands Sixth Amendment Protection Due to its Prevalence and Necessity in the Judicial System*, 48 CREIGHTON L. REV. 629 (June, 2015) (arguing that although public policy supports plea bargaining, it does not favor a system in which the defendant is at the mercy of the prosecutor and should be monitored to ensure a just result for both sides).

By not requiring explicit advisement of rights, the court sets a precedent that could lead to an increased number of instances in which defendants unknowingly waive fundamental protections.¹¹³ This tends to erode public trust in the justice system's ability to safeguard individual rights and may lead to higher rates of appeals and post-conviction relief applications, challenging the validity of pleas entered without fully informed consent.¹¹⁴ The Court could have interpreted and applied the law to align more closely with protection of the defendant's rights without compromising the integrity and fairness of judicial proceedings.¹¹⁵

For example, the Court in *Green* touches on a Michigan Supreme Court case that required a guilty plea to be set aside if the record did not affirmatively show that the defendant was informed of each of the three *Boykin* rights.¹¹⁶ In *People v. Jaworski*, the Michigan Supreme Court emphasized the need for the court to ensure that a defendant's waiver of the three *Boykin* rights is both knowing and voluntary to maintain the integrity of the plea.¹¹⁷ The Michigan Supreme Court later addressed the opinion in *People v. Ingram*; however, it did not completely change course as Georgia did in *Green*.¹¹⁸ Instead, when citing to considerations of finality and judicial efficiency, it limited only collateral attacks on plea-based convictions.¹¹⁹ The Michigan Supreme Court held in *Ingram* that while the procedural safeguards provided for in *Boykin* and *Jaworski* are crucial, they do have to be balanced with the competing policy concerns, but still allowed direct appeals to challenge plea-based convictions.¹²⁰

¹¹³ See Blank, *supra* note 112 (“In light of this uncertainty, criminal waivers such as those included in plea agreements have multiplied without limit.”); see also Samuel R. Wiseman, *Waiving Innocence*, 96 MINN. L. REV. 952 (February 1, 2012) (noting that prosecutors, through plea bargaining, have obtained waivers of the right to DNA testing using standardized plea agreements containing DNA waiver language).

¹¹⁴ Deborah R. Stagner, *Sandin v. Conner: Redefining State Prisoners' Liberty Interest and Due Process Rights*, 74 N.C. L. REV. 1761, 1780 (1996) (noting that prioritizing judicial efficiency while narrowing due process protections “gives little weight to achieving just results in individual cases.”).

¹¹⁵ See *infra* notes 119-124 and accompanying text.

¹¹⁶ *People v. Jaworski*, 194 N.W.2d 868, 872-73 (Mich. 1972).

¹¹⁷ *Id.*

¹¹⁸ 439 Mich. 288, 484 N.W.2d 241, 246-47 (Mich. 1992).

¹¹⁹ *Id.*

¹²⁰ *Id.*

These Michigan decisions strike a more fair balance between the policy considerations of judicial efficiency, the integrity of the plea process, and the individual rights of the defendant.¹²¹

CONCLUSION

Green v. State highlights a pivotal moment in Georgia's legal system regarding the standards for accepting guilty pleas.¹²² Under the totality of the circumstances test, *Green*'s holding that an affirmative disclosure of the three *Boykin* rights may streamline legal processes but at the potential cost of fully informed defendant waivers.¹²³

Green's reinforcement of a flexible approach to the knowing requirement of guilty pleas invites scrutiny regarding the balance between efficient court proceedings and the fundamental rights of defendants.¹²⁴ This case could serve as a precedent that influences not only future legal strategies but also the broader discourse on how rights are communicated and preserved within the judicial system.

This approach contrasts with the more stringent protections observed in Michigan, where the emphasis on a defendant's understanding and voluntary waiver continues to be upheld as a safeguard against unjust convictions.¹²⁵ While *Green* introduces flexibility in the totality of the circumstances determination of the knowing waiver of defendant's rights, it also raises concerns about the potential for those rights to be compromised in favor of procedural expediency.¹²⁶

Prepared by: *Jesse C. Moore*

¹²¹ Compare *id.* and *People v. Jaworski*, 194 N.W. 2d 868 with *Green v. State*, 2024 Ga. LEXIS 49.

¹²² 2024 Ga. LEXIS 49.

¹²³ See *supra*, notes 119-123 and accompanying text.

¹²⁴ See *supra*, notes 95-103 and accompanying text.

¹²⁵ See *supra*, notes 119-124 and accompanying text.

¹²⁶ See *id.*